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June 4, 2024

VIA ECF

The Honorable Leda D. Wettre, U.S.M.J.
United States District Court
Martin Luther King, Jr. Federal Building
50 Walnut Street, Room 2060
Newark, New Jersey 07102

Re: *Axsome Therapeutics, Inc., et al. v. Teva Pharmaceuticals, Inc.*
Civil Action No. 23-1695 (MEF)(LDW) (consolidated)

Dear Judge Wettre:

This firm, together with Quinn Emanuel, represents Plaintiffs Axsome Therapeutics, Inc. and Antecip Bioventures II LLC (together, “Plaintiffs”) in this case. Pursuant to Local Patent Rule 3.7, and further to our discussion during the May 30, 2024 status teleconference, we write with Defendant Teva Pharmaceuticals, Inc.’s (“Teva”) consent to respectfully request leave to amend Plaintiffs’ December 22, 2023 Responses to Invalidity Contentions.

Plaintiffs respectfully submit that they should be permitted leave to amend their Responses to Invalidity Contentions for at least the following reasons. *First*, there is good cause to amend the Responses to Invalidity Contentions because Plaintiffs’ amendments are tailored to address the new improper inventorship arguments Teva recently made in its First Amended Invalidity Contentions, served on May 28, 2024 pursuant to Your Honor’s May 28 Order granting Teva’s request for leave to amend its invalidity contentions (ECF No. 58). There is also good cause to amend because Teva has consented to the amendment and, as set forth below, this amendment will not affect the case schedule and trial date. *See* L. Pat. R. 3.7(e) (good cause exists where there is “consent by the parties in interest to the amendment and a showing that it will not lead to an enlargement of time or impact other scheduled deadlines.”).

Second, Plaintiffs’ request is timely because the need for the proposed amendment did not arise until after Teva served its First Amended Invalidity Contentions on May 28, 2024. Moreover, the parties agreed on June 3, 2024 that Plaintiffs may serve their amended Responses to Invalidity Contentions on July 12, 2024,¹ and Plaintiffs filed this application with the Court promptly thereafter.

¹ This deadline is consistent with the timeframe set forth in Local Patent Rule 3.6(i) (governing service of responses to invalidity contentions in Hatch-Waxman cases).

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Third, there is no prejudice to Teva because Teva has consented to this request, and the parties' agreement will avoid motion practice on this issue. And since fact discovery does not close until February 7, 2025 (*see* ECF No. 52), Plaintiffs' amendment will not impact the case schedule.

Accordingly, Plaintiffs respectfully request leave to amend their Responses to Invalidity Contentions, solely to rebut the new improper inventorship arguments that Teva made its May 28 amended invalidity contentions, on or by July 12, 2024. If this meets with the Court's approval, we respectfully request that Your Honor sign the below form of endorsement and have it entered on the docket.

Thank you for Your Honor's kind attention to this matter.

Respectfully yours,



Charles M. Lizza

cc: All counsel of record (via email)

SO ORDERED that Plaintiffs may amend their Responses to Invalidity Contentions, solely to rebut the new improper inventorship arguments that Teva made its May 28, 2024 amended invalidity contentions, on or by July 12, 2024.

Hon. Leda D. Wettre, U.S.M.J.